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June 3, 2013

Via Electronic and Certified Mail

Records, FOIA, and Privacy Branch
Office of Environmental Information
Environmental Protection Agency
1200 Pennsylvania Avenue (2822T), NW
Washington, DC 20460
Email: hq.foia@epa.gov

Region III (DE, DC, MD, PA, VA, WV)
EPA
FOIA Officer
1650 Arch Street
Philadelphia, PA 19103-2029
Email: r3foia@epa.gov

Re: Freedom of Information Act Request for Records Related to Hovnanian Enterprises, Inc.

Dear Sir/Madam,

On behalf of the Queen Anne's Conservation Association ("QACA"), we are writing to request records held by the Environmental Protection Agency ("EPA") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), concerning Hovnanian Enterprises, Inc. ("Hovnanian"). As required by FOIA, we expect a complete response within twenty working days. *Id.* § 552(a)(6)(A)(i).

I. Records Requested

QACA requests all records, including letters, memoranda, files, photographs, recordings, emails, notes, or any other written or electronic records, which discuss or in any way relate to the following:



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A. With regard to a 2010 Consent Decree between EPA and Hovnanian concerning Hovnanian's Clean Water Act violations in connection with improper stormwater discharges from construction activities:¹

1. All records that discuss or relate to actual or potential Hovnanian² violations of the 2010 Consent Decree either reported by Hovnanian itself, or discovered by EPA or any other entities in any manner, and associated penalties assessed, if any (*see* Consent Decree ¶ 29);
2. All records that discuss or relate to requests for entry or actual entries onto Hovnanian sites for the purpose of assessing compliance with the 2010 Consent Decree, along with Hovnanian responses to requests for entry and results/findings of actual entries (*see* Consent Decree ¶ 48), including but in no way limited to records concerning October, 2012 violations of the 2010 Consent Decree by Hovnanian, as discovered by EPA Region III.

B. With regard to a 2013 Consent Agreement between EPA and Hovnanian regarding Hovnanian's NPDES permit violations in connection with improper stormwater discharges at the Shipley and Palisades construction sites:³

1. All records that discuss or relate to Hovnanian violations described in Section III of the February 26, 2013 Consent Agreement and Final Order between the EPA and Hovnanian Enterprises, Inc. ("Consent Agreement") involving the *Shipley* and *Palisades* sites, *see* Consent Agreement § III, ¶¶ 2(4) & 5(4), including evidence surrounding the "nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the [Clean Water] Act, 33 U.S.C. § 1319(g)," *id.* at § IV, ¶ 9;
2. All records that discuss or relate to any new and separate action(s) to recover additional civil penalties for claims made in relation to the *Shipley* and *Palisades* matters, if applicable, *id.* at § IV, ¶ 17.

¹ *See* 2010 Consent Decree, attached hereto as Exhibit A.

² For the purposes of this FOIA request, in accordance with the 2010 Consent Decree, Hovnanian should be defined as "Hovnanian Enterprises, Inc., its successors and assigns, as well as any subsidiaries, divisions, or related companies, including limited liability corporations, that engage in Construction Activity. For the purposes of this definition, a 'related company' means entities where Hovnanian Enterprises, Inc., or its successors and assigns, subsidiaries, divisions, or related companies, own a majority interest in the entity." *See* Consent Decree at 6. "Hovnanian" also includes any colloquial names referring to Hovnanian Enterprises, Inc., including but not limited to "K. Hov," "K. Hovnanian," and "K. Hovnanian Homes."

³ *See* 2013 Consent Agreement, attached hereto as Exhibit B.

Please provide records as they are searched and available for release, rather than awaiting complete processing of the entire request.

II. Request for Fee Waiver

We respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii). QACA is a 501(c)(3) non-profit organization, whose mission is to monitor environmental impacts upon and to promote and protect the natural resources, rural character and small towns of Queen Anne's County, Maryland, and, as explained below, QACA's request meets the two pronged test for a fee waiver, *i.e.*, (1) the subject of this request implicates the public interest, and the disclosure of such information will "contribute significantly to public understanding of the operations or activities of the government;" and (2) the request is not primarily in the commercial interest of the requester. *See id.*; 43 C.F.R. § 2.19(b); 40 C.F.R. § 2.107(l)(1).

A. QACA's Request Concerns the Public Interest

First, the subject of this request concerns the *operations and activities of the government*: QACA seeks records from the staff and officials of the EPA concerning the agency's dealings with Hovnanian Enterprises, Inc., particularly, those in connection with Hovnanian's violations of the Clean Water Act and its adherence (or lack thereof) to the requirements of the 2010 Consent Decree, entered into by Hovnanian, the EPA, and state plaintiffs from Maryland, Virginia, West Virginia, and the District of Columbia.

Second, the information QACA seeks is *likely to contribute to an understanding* of the EPA's operations or activities in overseeing a large company that has repeatedly been charged with Clean Water Act violations. The records QACA requests concern Hovnanian's willingness and ability to comply with various environmental regulations, including the requirements of the Consent Decree imposed by EPA, especially in light of the company's long-standing history of flouting such obligations as set forth in the materials filed in connection with the 2010 Consent Decree. Specific information regarding Hovnanian's compliance with the 2010 Consent Decree and 2013 Consent Agreement is generally unavailable and not in the public domain, either in a duplicative or substantially identical form.

Third, disclosure of the information QACA requests *will contribute to the public understanding*: QACA is requesting the information outlined above because it bears a strong relationship to Hovnanian's proposed Four Seasons development project on Kent Island, Maryland; if authorized, the project would reportedly be *the largest residential project ever undertaken in Maryland's Critical Area*. Given the magnitude of this project, Hovnanian's willingness and ability to comply with regulations established to protect the surrounding waters

is undoubtedly of great interest to a “reasonably broad audience” of people who live, work, and play in the Chesapeake Bay area. See 40 C.F.R. § 2.107(l)(2)(iii).

Moreover, QACA’s expertise in the subject area and ability and intention to effectively convey the requested information to the public is well-established. *QACA is the foremost organization dedicated to educating and engaging the public in Queen Anne’s County, Maryland* about development and other environmental issues affecting the County. QACA was founded over forty years ago to promote and protect the natural resources, rural character and small towns of Queen Anne’s County, and it works to ensure that productive farms and safe and prosperous towns continue to thrive within the County. QACA intends to analyze and post relevant information obtained from this FOIA request on its website, <http://www.qaca.org>, to distribute the information to the public using a mailing list QACA has been building for decades, to hand out information at relevant public meetings, and to otherwise disseminate information to the news media in the area. In this way, QACA expects the requested information to reach those who are likely to be directly affected by Hovnanian’s Four Seasons project, and therefore most interested in whether Hovnanian has improved its compliance with the environmental regulations put in place to protect the environmentally sensitive Chesapeake Bay.⁴ Indeed, QACA has already provided to the concerned public extensive information concerning Hovnanian’s activities, including a comprehensive review of some of the potential environmental impacts of Hovnanian’s Four Seasons project at a recent public meeting on Kent Island organized by QACA.

Finally, the information sought in this FOIA request is, indeed, *likely to contribute “significantly” to public understanding* of the EPA’s operations and activities, see 40 C.F.R. § 2.107(l)(2)(iv): At present, the public concerned with the proposed Four Seasons project has very limited knowledge regarding Hovnanian’s compliance with its environmental obligations, and EPA’s oversight of that compliance, including the provisions of the 2010 Consent Decree. So far as QACA is aware, Hovnanian has never once publicly disclosed or discussed its documented environmental violations in any of the many public meetings and hearings on the Four Seasons project. Disclosure of the information QACA seeks in this request will surely enhance considerably the public’s understanding of this topic, and thus will provide the public with much needed data to inform their opinions of Hovnanian’s Four Seasons project.

B. QACA’s Request is for Non-Commercial Purposes

The requester, QACA, has no commercial interest that would be furthered by the requested disclosure: QACA is a 501(c)(3) nonprofit organization, which will neither be paid for, nor receive commercial benefits from, the public dissemination of the information sought herein. Further, there is a substantial public interest in the release of the materials QACA is

⁴ If necessary for your review of the fee waiver request, QACA can supply numerous examples of its dissemination to the media of information bearing on development issues in Queen Anne’s County.

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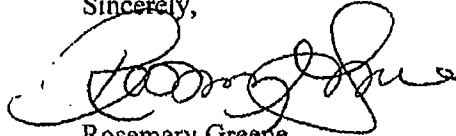
requesting, which will directly contribute to the people of Queen Anne's County's ability to participate meaningfully in the future of their community.

III. Conclusion

According to 40 C.F.R. § 2.107(l)(3)(ii), "[a] fee waiver . . . is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure." As explained above, QACA's request indeed meets the public interest standard, and this public interest necessarily exceeds the commercial interest, given that no commercial interest in the requested information exists. As such, we ask that QACA's fee waiver request be granted, and that we receive all the records responsive to this request in complete and unredacted form within twenty working days, as required by FOIA, 5 U.S.C. § 552(a)(6)(A).

We appreciate your assistance in obtaining the requested information as soon as possible. Please contact Rosemary Greene at (202) 588-5206 or rgreene@meyerglitz.com should you have any questions or wish to discuss this matter further. Please send the requested records to the address provided below.

Sincerely,



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Washington, DC 20009
rgreene@meyerglitz.com

